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FEB 3 2005

In re Application of:
Greenaway et al.
Serial No.: 09/622,405
Filed: August 17, 2000
Attorney Docket No.: 124-786

DECISION ON PETITION
FOR REFUND

This is a decision on the petition filed June 16, 2004 requesting a refund of the fees for filing the Notice of Appeal on March 3, 2003 and the Appeal Brief on May 2, 2003.

The petition is **DENIED**.

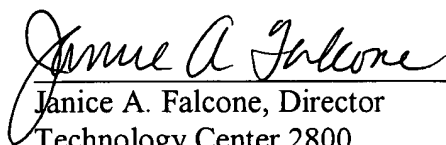
Petitioner asserts that the fees for the Notice of Appeal and Appeal Brief were unnecessary in view of the Board of Patent Appeals and Interferences' Decision on Appeal dated June 8, 2004, and therefore should be refunded.

Authorization to refund fees is set forth under 37 CFR 1.26. 37 CFR 1.26(a) states, in part, as follows:

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

A review of the record reveals that the filings of the Notice of Appeal and of the Appeal Brief were necessary to resolve the issue of patentability of the claims. The fees for filing a Notice of Appeal and an Appeal Brief are required under 35 U.S.C. § 41(6). As such, refunding of the appeal fees are not authorized since they were required by statute and were not paid by mistake or in excess.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

A handwritten signature in black ink, reading "Janice A. Falcone". The signature is written in a cursive style with a large initial "J".

Janice A. Falcone, Director
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